


Chicago Board of Trade

May 14, 1997

VIA FACSIMILE

**Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463**

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 14 10 50 AM '97

RE: Draft Advisory Opinion 1997-05

Dear Secretary:

By this letter, the Board of Trade of the City of Chicago ("CBOT") is submitting its comments on draft Advisory Opinion 1997-05 proposed by the Federal Election Commission's ("FEC") Office of the General Counsel relating to the Chicago Mercantile Exchange's ("CME") April 1, 1997 letter regarding whether CME members who lease their seats on the Exchange from seat owners would be considered members under the Federal Election Campaign Act of 1971, as amended, ("Act") and FEC regulations, and therefore could be solicited for voluntary contributions to the CME's separate segregated fund.

The CBOT, by virtue of its business and corporate structure, is in virtually the same position as the CME as to the applicability of which of its members are eligible, pursuant to the Act and FEC regulations, to be solicited for voluntary contributions to its separate segregated fund, particularly when it comes to lessees or delegates of Exchange memberships or seats. In that regard, the CBOT agrees with the language in draft Advisory Opinion 1997-05 that recognizes the strong connection of the member-lessees to the organizational structure of the CME which allows for their qualification as CME members for purposes of the Act and FEC regulations. The significant organizational and financial attachment of member-lessees to the CME are as strong or stronger than the same attachments found by the Court as adhering to the plaintiffs in *Chamber of Commerce v. FEC*, 69 F.3d 600 (D.C. Cir. 1995); *petition for rehearing denied*, 76 F.3d 1234 (1996).

The organizational attachments of the member-lessees to the CME, such as going through a membership approval process, paying transaction fees and being subject to the rules of the Exchange, are well documented by the CME (and fundamentally identical to the CBOT) in its letter requesting the subject Advisory Opinion. However, what is even more impressive than the organizational attachment is the significant financial attachment to the CME (and the CBOT) that the member-lessees possess. In that regard, it is not just the fact that member-lessees pay up to \$3,900.00 per month for a membership lease at the CME (and up to \$9,000.00 per month for a membership lease at the CBOT), but it is the fact that leasing a membership and

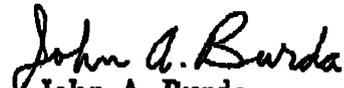
trading at the CME is likely the sole means of making a livelihood for the member-lessees. An individual does not simply join the CME or another exchange and pay an insignificant amount of annual dues to assist the organization in furthering the cause of issues its members believe in. Instead, the financial attachment of the member-lessees to the exchange is much more significant; it allows for the member-lessees to earn a living and provide for their families. Arguably, there can be no stronger financial attachment between an individual and an organization than where, as in the case between an exchange and a member-lessee, the member-lessee spends days plying a trade at the organization in order to make a decent living.

By way of comparison, if the Court in *Chambers* determined that the financial attachments to the plaintiff Chamber of Commerce and American Medical Association by its members, even with their more tenuous attachments, were strong enough to allow for the members to be considered "members" under the Act and FEC regulations, then it only follows that the arguments put forth by the CME should meet with equal success.

In conclusion, the CBOT supports the language in draft Advisory Opinion 1997-05 as submitted by the Office of the General Counsel of the FEC, which would supersede those portions of Advisory Opinions 1987-31, 1988-38, 1988-39 and 1994-34 relating to the previous conclusions that member-lessees of the various organizations did not have sufficient organizational and financial attachments to the organizations to qualify them as members of the organizations for purposes of the Act and FEC regulations, and that only one membership in the organizations existed with respect to each leased membership. The CBOT thus supports the current conclusion in draft Advisory Opinion 1997-05 that the circumstances of the member-lessees of the CME within the organizational structure of the CME qualifies the member-lessees as "members" for purposes of the Act and FEC regulations, and allows them to be solicited by the CME and its separate segregated fund for voluntary contributions to the CME separate segregated fund.

Sincerely,


Carol A. Burke
Executive Vice-President &
General Counsel


John A. Burda
Senior Attorney

cc: Office of the General Counsel (FEC)